

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALICIA NOLEN,
Plaintiff,

v.

PEOPLECONNECT, INC.,
Defendant.

Case No. 20-cv-09203-EMC

**ORDER RE CLASS DEFINITION AND
CLASS NOTICE**

Docket Nos. 262, 266

The Court has received the parties' status report and related filings regarding the results of their meet and confer on class definition and class notice. *See* Docket Nos. 262-66. The Court had previously ordered the meet and confer after it conditionally granted Ms. Nolen's motion for class certification.

Having reviewed those filings, the Court finds that the parties have failed to meet and confer in good faith. The Court therefore orders the parties to further meet and confer with the warning that a party that does not act in good faith risks being sanctioned. To assist the parties in their meet and confer, the Court provides some guidance below.

First, to the extent PeopleConnect suggests it would be better to defer the meet and confer because it has asked the Ninth Circuit to permit an appeal of the class certification order, the Court rejects that position. Rule 23(f) provides that "[a]n appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders." Fed. R. Civ. P. 23(f).

PeopleConnect has not filed a motion to stay proceedings based on its request for an appeal. It cannot informally seek a stay via a status report. Moreover, PeopleConnect has made no attempt to address the factors that are considered where a request for a stay is made pursuant to Rule 23(f).

1 *See Garvey v. Kmart Corp.*, No. C 11-02575 WHA, 2012 U.S. Dist. LEXIS 119024, at *2 (N.D.
2 Cal. Aug. 22, 2012) (“Under Rule 23(f), an appeal does not stay proceedings in the district court
3 unless the district judge or the court of appeals so orders. In deciding whether to stay this action,
4 the following four factors should be weighed: (1) likelihood of success on the merits of the appeal;
5 (2) harm to the defendant in the absence of a stay; (3) harm to the plaintiff if stayed; and (4) public
6 interest.”). Finally, the Court notes that, in some respects, PeopleConnect has effectively
7 obtained, or is effectively obtaining, a stay of proceedings by taking some unreasonable positions
8 during the parties’ meet and confer.

9 Second, with respect to the issue of class definition, the Court finds helpful Judge
10 Chhabria’s comments regarding class definition:

11 [I]t must be at least "possible" that each class member suffered an
12 injury at the hands of the defendant. More generally, the class
13 definition must be "reasonably co-extensive" with the plaintiff's
14 "chosen theory of liability." If the proposed class includes a distinct
15 subset of members who were not misled, who were not injured, who
16 could not possibly recover, and who would be easy to weed out at
17 the front end, then the proposed class membership does not "fit the
18 theory of legal liability."

16 *Jensen v. Natrol, LLC*, No. 17-cv-03193-VC, 2020 U.S. Dist. LEXIS 13214, *1-2 (N.D. Cal. Jan.
17 27, 2020). In light of these comments, the definition proposed by Ms. Nolen – though not perfect
18 – provides at least a solid starting point for the parties’ meet and confer. Ms. Nolen proposes: “All
19 persons residing in the State of California who: (1) are not registered users of Classmates.com; (2)
20 have never donated a yearbook to Classmates.com; (3) whose names are or were searchable on the
21 Classmates.com website, where “searchable” means that a search for their name yields at least one
22 result identifying them by name, school, and year of attendance; and (4) where at least one such
23 result became searchable for the first time on or after December 18, 2018.” The third and fourth
24 elements likely need some modification – *e.g.*, it is not clear to the Court that “searchable” needs
25 to be defined and Ms. Nolen’s definition of “searchable” seems to get into a different issue (that of
26 reasonable identifiability). It may also be helpful to clarify that a search is conducted, through use
27 of a search bar, of a yearbook(s) made available on the Classmates.com website.

28 Third, regarding class notice, the Court sees no need to defer a meet and confer on class

1 notice until after the class definition is fixed with 100% precision. The form of notice and method
2 of delivery will not likely turn on the precise definition of the class. Also, unless PeopleConnect
3 is arguing, *e.g.*, that a person who simply visits and browses Classmates.com is bound to the
4 Terms of Service, including the arbitration agreement, the parties should be able to work out
5 language for the class notice that, *e.g.*, becoming a registered user of Classmates.com will take a
6 person outside of the class definition.

7 With the above guidance, the Court expects that the parties should be able to work out any
8 differences and reach agreement on a class definition and class notice. In stipulating to a class
9 definition, PeopleConnect can still reserve its right to argue on appeal certification of the class.
10 The parties shall report back on the results of their meet and confer within two weeks of the date
11 of this order.

12
13 **IT IS SO ORDERED.**

14
15 Dated: January 19, 2024

16
17 

18 EDWARD M. CHEN
19 United States District Judge
20
21
22
23
24
25
26
27
28